

June 26, 2008

The Honorable J. Yancey McGill
Senator, District No. 32
508 Gressette Building
Columbia, South Carolina 29201

Dear Senator McGill:

You have requested an opinion concerning a question regarding the age of Bishop Preston Warren Williams, presiding Prelate of the 7th Episcopal District of the African Methodist Episcopal Church. By way of background, you provide the following information:

Bishop Williams was born in Georgia, and has a birth certificate issued by the State of Georgia. He also has a Georgia driver's license.

In reference to an issue that has been raised about his date of birth, we would appreciate a written response from you stating what document would South Carolina, and for that matter any state, recognize as stating his correct and legal date of birth.

It is our opinion that a court would likely determine that Bishop Williams' age is governed by his birth certificate. In our view, Bishop Williams would be legally recognized by the courts of the State of South Carolina, as well as the courts of other states, as having been born on July 17, 1939.

Law / Analysis

We begin our analysis by noting that Bishop Williams was, according to his birth certificate, born in Georgia. Thus, the law of Georgia regarding the weight to be given birth certificates or other proofs of age would be deemed to govern. Section 31-10-24(a) of the Code of Laws of Georgia authorizes the state registrar "to prepare typewritten, photographic, electronic, or other reproductions of certificates or reports in the State Office of Vital Records. Such reproductions when certified by the state registrar or legal custodian *shall be accepted as the original records for all purposes.*" (emphasis added). Moreover, pursuant to § 31-10-26(b) of the Georgia Code, it is provided in pertinent part that "[a] certified copy of a vital record or any part thereof ... shall be considered for all purposes the same as the original *and shall be prima-facie evidence of the facts stated therein*" (emphasis added). *See also, Sherrer v. Lynn*, 172 Ga. App. 745, 324 S.E.2d 500 (1984) [pursuant to Georgia law, death certificate is *prima facie* evidence of the facts stated therein].

It is also well settled in other jurisdictions that a birth certificate constitutes the usually recognized proof of age. For example, in *Upshaw v. State*, 350 So.2d 1358, 1365, (1977), the Supreme Court of Mississippi held that when proof of age becomes necessary, “the better practice would be to introduce defendant’s birth certificate together with proof that defendant is the person named in the birth certificate.” And, in *Genovese Drug Stores, Inc. v. Harper*, 854 N.Y.S.2d 191, 193 (2008), proof of age by admission of a birth certificate was considered “substantial evidence” that the petitioner violated the law prohibiting selling cigarettes to minors. Moreover, in *In re Zaim R.*, 822 N.Y.S.2d 368, it was concluded that the Family Court must have a birth certificate constituting proof of a child’s age for purposes of appointment of a guardian. *See also*, 75 C.J.S. *Rape*, § 67 [age of female in statutory rape case may be shown by certificate of birth, or entry in family Bible, or family reputation]; 32A C.J.S. *Evidence* § 857 [A birth certificate or record may be admissible as competent evidence of the facts recited therein and an official birth certificate is ordinarily competent on the issue of the fact of birth]; 23 C.J.S. *Criminal Law* § 1136 [a properly certified copy of a birth or death certificate, as distinguished from an uncertified copy, is the best evidence of the fact of birth or death]; 60A Am.Jur. *Pensions* § 945 [the “best type of evidence to prove a claimant’s age (for purposes of pensions) is a birth certificate recorded before age five, or a church record or baptism recorded before age five or a notification of registration of birth made before age five].

Other authorities also deem a birth certificate as the best or preferred evidence of age or of one’s legal name. As one commentator has noted, where there is a conflict among various documents as to a person’s legal name, “the debtor’s birth certificate may be the best evidence.” Barkley Clark and Barbara Clark, *The Law of Secured Transactions* § 2.09(e) (2005). Moreover, 20 C.F.R. § 407.716(a) (1999) requires that, for purposes of Social Security benefits, the best evidence of age is one’s birth certificate, or a religious record showing date of birth.

South Carolina law appears generally to be in accord with these various authorities. In an opinion, dated August 24, 1965, this Office commented, for example, that “a birth certificate [is] the most common instrument of proof” of age. In addition, Section 23-23-60(B)(8) requires a “birth certificate or another acceptable document” for purposes of becoming certified by the South Carolina Law Enforcement Training Council as a “law enforcement officer.” And, in § 20-1-260, the filing of a birth certificate, or a hospital or baptismal certificate, issued within one year following birth is deemed the preferred evidence for a minor applicant for a marriage license. While a birth certificate is not necessarily the best evidence in a South Carolina court proceeding for proof of age, the court will typically accept in lieu thereof testimony from a parent “as to the age of his or her child if this is done with actual knowledge.” *State v. Bailey*, 253 S.C. 304, 309, 170 S.E.2d 376, 378 (1969). The problems encountered by relying upon a driver’s license as proof of age are acknowledged in *State v. Larson*, 623 S.W.2d 69 (Mo. App. 1981). Thus, there is little doubt that a South Carolina court would accept a birth certificate as proof of age, in preference to a driver’s license.

Moreover, the “Full Faith and Credit Clause of the United States Constitution (Art. IV, § 1) requires a state to give “[f]ull faith and credit ... to the public acts, records and judicial proceedings of every other state.” While a state need not give “Full Faith and Credit” to a statute or policy which conflicts with its own, in instances where such policy is not contrary to that State’s law or public policy, it is required by the federal Constitution to so recognize such statute and public records. *Op. S.C. Atty. Gen.*, April 11, 1996 (and cases cited therein); *Pieper v. Pieper*, 108 N.C. App. 722, 425 S.E.2d 435 (1993). As the Court in *Pieper* noted, the mere fact that the law of the forum differs from that of the other jurisdictions does not mean that the foreign statute is contrary to the public policy of the forum state. The public policy exception is an “extremely narrow” one to the granting of full faith and credit. *Id.*

As stated above, Georgia law, in the form of § 31-10-26(b), deems a certified copy of a birth certificate to be “considered for all purposes the same as the original and shall be *prima-facie* evidence of the facts stated therein.” Where particular evidence is deemed *prima facie* evidence, it “is not overcome by evidence which affords a bare conjecture to the contrary.” 32A C.J.S. *Evidence*, § 1316. Only evidence of equal or greater weight or status serves to rebut such *prima facie* evidence. *Id.* See also *Arkwright Mills v. Clearwater Mfg. Co.*, 217 S.C. 530, 61 S.E.2d 165, 169 (1950) [a *prima facie* case will stand unless “the opposite party produces evidence sufficient to overcome the *prima facie* presumption.”]; *Carabello v. Sec. of Health and Human Services*, 670 F.Supp. 1106 (D. Puerto Rico 1987) [“the proof of age as appears from the certificate issued by the Registry of Vital Statistics can be overcome by other evidence which may carry to the mind of the trier of facts the conviction that the date of birth of a person is other than that stated therein”]; *In re Leonard*, 321 A.2d 486, 491 (Me. 1974) [“the effect of the introduction of *prima facie* evidence in proof of a disputed fact is to shift the burden of going forward to the contesting party whose obligation then becomes to present facts designed either to controvert such disputed fact, or at the very least, to bring the contrasting facts to a point where in terms of evidentiary value they may said to be of equal weight.”]; *Village of Bethesda v. Mallonee*, 136 N.E.2d 457, 463 (Ohio 1955)[“... if a *prima facie* case is made, then the burden is on the defendant to counterbalance such evidence by equal weight.”]. Thus, pursuant to Georgia law, information on a driver’s license would not be deemed sufficient to rebut proof of one’s age, as documented by a certified copy of a birth certificate.

Inasmuch as South Carolina law is not contrary to Georgia law, but is consistent therewith, concerning the considerable weight which must be given a birth certificate as to proof of age, see, *State v. Bailey, supra*, it is thus our opinion that the Full Faith and Credit Clause of the federal Constitution mandates recognition by South Carolina, as well as other states (to the extent not in conflict with a particular state’s own law or policy), of the Georgia birth certificate of Bishop Williams. We regard his birth certificate as dispositive proof of his age. See, *Northern v. State*, 152 Tex. Crim. App. 569, 216 S.W.2d 192 (1949) [Texas courts required to admit Louisiana birth certificate under 28 U.S.C.A. § 1739 and the full faith and credit clause of the Constitution]. We

The Honorable J. Yancey McGill
Page 4
June 26, 2008

believe a South Carolina court, and other courts as well, would accept his birth certificate as definitive proof of his age, notwithstanding any contrary indication suggested by his driver's license.

Conclusion

It is our opinion that South Carolina courts would deem the date of birth as shown on Bishop Williams' birth certificate to be legally dispositive and controlling in the situation set forth by your letter. Georgia law requires that a birth certificate is "prima facie evidence of the facts stated therein" South Carolina law and policy is not to the contrary, but is consistent with Georgia's statute.

Thus, in our view, South Carolina courts would, under the Full Faith and Credit Clause, and the principles of comity, apply Georgia law. Such application results in the conclusion that a Georgia driver's license is not of sufficient weight to refute the date of birth as documented by Bishop Williams' birth certificate. Thus, the birth certificate date of birth would be determinative.

The reason that the driver's license is not of equal evidentiary weight or is not comparable to the reliability of a birth certificate is readily apparent. The date of birth appearing on a driver's license is based upon one's information and belief at the time the person applies for the license, which is necessarily many years after birth. However, a birth certificate is usually issued based upon information provided contemporaneously with birth.

Accordingly, in our opinion, the courts and public authorities of South Carolina would recognize Bishop Williams' date of birth as that stated in his birth certificate. Likewise, absent a controlling contrary statute, which we consider unlikely, we believe the same legal recognition would be given by other states as South Carolina would give. Thus, in our view, the Full Faith and Credit Clause of the federal Constitution would require that the date of birth on the birth certificate be honored.

Yours very truly,

Henry McMaster

HM/an